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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

UNITED STATES OF AMERICA,

and

**THE STATE OF CALIFORNIA DEPART-
MENT OF TOXIC SUBSTANCES CONTROL**

Plaintiffs,

v.

**NEWMONT CAPITAL LIMITED and
NEWMONT MINING CORPORATION OF
CANADA LIMITED**

Defendants.

No. 2:08-at-1061

CONSENT DECREE

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27 Canada Limited

28
CONSENT DECREE

I. BACKGROUND

1
2 A. The United States of America ("United States"), on behalf of the Administrator of the
3 United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant
4 to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act
5 of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs
6 incurred or to be incurred for response actions taken or to be taken at or in connection with the
7 release or threatened release of hazardous substances at the Lava Cap Mine Superfund Site in
8 Nevada City, Nevada County, California ("the Site").
9

10 B. The State of California Department of Toxic Substances Control ("DTSC") has joined
11 the United States as a co-plaintiff in the complaint filed by the United States against the defendants
12 in this Court alleging that the defendants are liable to DTSC under Section 107 of CERCLA, 42
13 U.S.C. § 9607. DTSC seeks reimbursement of response costs incurred or to be incurred for response
14 actions taken or to be taken at or in connection with the release or threatened release of hazardous
15 substances at the Site, together with accrued interest.
16

17 C. The defendants that have entered into this Consent Decree ("Settling Defendants") do not
18 admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the
19 complaints.
20

21 D. The United States, DTSC, and Settling Defendants agree, and this Court by entering this
22 Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that
23 settlement of this matter will avoid prolonged and complicated litigation between the Parties, and
24 that this Consent Decree is fair, reasonable, and in the public interest.

25 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,
26 AND DECREED:
27
28

II. JURISDICTION

1
2 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
3 §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over
4 Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent
5 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

6
7 2. This Consent Decree is binding upon the United States and DTSC, and upon Settling
8 Defendants and their successors and assigns. Any change in ownership or corporate or other legal
9 status, including, but not limited to, any transfer of assets or real or personal property, shall in no
10 way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

11
12 3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are
13 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned
14 to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent
15 Decree or in any appendix attached hereto, the following definitions shall apply:

16
17 a. "CERCLA" shall mean the Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

19
20 b. "Consent Decree" shall mean this Consent Decree and all appendices attached
21 hereto. In the event of conflict between this Consent Decree and any appendix, this Consent
22 Decree shall control.

23
24 c. "Day" shall mean a calendar day. In computing any period of time under this
25 Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the
26 period shall run until the close of business of the next working day.

27
28 d. "DOJ" shall mean the United States Department of Justice and any successor
departments, agencies or instrumentalities of the United States.

CONSENT DECREE

1 e. "DTSC" shall mean the State of California Department of Toxic Substances
2 Control and any of its predecessor or successor departments or agencies.

3 f. "EPA" shall mean the United States Environmental Protection Agency and any
4 successor departments, agencies or instrumentalities of the United States.

5 g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance
6 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

7 h. "Interest" shall mean interest at the rate specified for interest on investments of
8 the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded
9 annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate
10 of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject
11 to change on October 1 of each year.

12 i. "Paragraph" shall mean a portion of this Consent Decree identified by an
13 Arabic numeral or an upper or lower case letter.

14 j. "Parties" shall mean the United States, DTSC, and the Settling Defendants.

15 k. "Plaintiffs" shall mean the United States and DTSC.

16 l. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*
17 (also known as the Resource Conservation and Recovery Act).

18 m. "Section" shall mean a portion of this Consent Decree identified by a Roman
19 numeral.

20 n. "Settling Defendants" shall mean Newmont Capital Limited and Newmont
21 Mining Corporation of Canada Limited, including their respective successors and assigns where
22 the sole basis of liability is their status as such.

23 o. "Site" shall mean the Lava Cap Mine Superfund site, which is located in the
24 Sierra Nevada foothills in a rural residential area of Nevada County in the State of California.
25 The nearest cities are Nevada City, located approximately three miles northwest of the Site, and
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1 Grass Valley, located approximately six miles southwest of the Site. As a whole, the Site
2 comprises a large geographic area that includes the mine area, where the hardrock operations
3 took place; portions of Little Clipper Creek, which flows south from the mine; Clipper Creek;
4 Lost Lake, a large man-made retention pond built as part of the mine operations; and portions of
5 Clipper Creek and Little Greenhorn Creek downgradient of Lost Lake. The Site is generally
6 shown on the map included in Appendix A.

7
8 p. "United States" shall mean the United States of America, including its
9 departments, agencies and instrumentalities.

10 **V. STATEMENT OF PURPOSE**

11 4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling
12 Defendants to make a cash payment, which includes a premium, to address their liability for the
13 Site as provided in the Covenant Not to Sue by Plaintiffs in Section VIII, and subject to the
14 Reservations of Rights by United States and DTSC in Section IX.

15 **VI. PAYMENT OF RESPONSE COSTS**

16
17 5. Payment to EPA. Within 30 days of entry of this Consent Decree, Settling Defendants
18 shall pay to EPA \$1,860,000, plus all interest accrued on \$1,860,000 of the \$3,000,000 that
19 Settling Defendants funded in an escrow account on July 2, 2008.

20
21 6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S.
22 Department of Justice account in accordance with current EFT procedures, referencing the EPA
23 Region and Site Spill ID Number 093Y, and DOJ Case Number 90-11-3-09404. Payment shall
24 be made in accordance with instructions provided to Settling Defendants by the Financial
25 Litigation Unit of the U.S. Attorney's Office in the Eastern District of California following
26 lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00
27 p.m. Eastern Time shall be credited on the next business day.
28

1 7. At the time of payment, Settling Defendants shall send notice that payment has been
2 made to EPA and DOJ in accordance with Section XIII (Notices and Submissions).

3 8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Lava
4 Cap Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained
5 and used to conduct or finance response actions at or in connection with the Site, or to be
6 transferred by EPA to the EPA Hazardous Substance Superfund.

7
8 8.1. Payment to DTSC. Within 30 days of entry of this Consent Decree, Settling
9 Defendants shall pay to DTSC \$1,140,000, plus all interest accrued on \$1,140,000 of the
10 \$3,000,000 that Settling Defendants funded in an escrow account on July 2, 2008

11 8.2 Payment shall be made in the form of a certified check, cashier's check, or by
12 Electronic Fund Transfer ("EFT"). The check shall be made payable to " Department of Toxic
13 Substances Control," bearing on its face the project code for the Site (site #100337) and shall
14 reference the Lava Cap Mine Site. Settling Defendants shall send the check[s] to:

15
16 Department of Toxic Substances Control
17 Accounting Office
18 1001 I Street, 21st Floor
19 P.O. Box 806
20 Sacramento, California 95814-0806

21 If Settling Defendants pay by EFT, they shall inform the DTSC Accounting Office of the
22 EFT transaction immediately by fax at (916) 322-0274 or by mail at Department of Toxic
23 Substances Control, 1001 I St., 21st Floor, Sacramento, CA 95814. The following information
should be used for payment made by EFT:

24 Account Title: Dept of T es Control EFT / ZBA Account
25 ABA (routing) n
26 Account number:
27 Bank Name: Bank of America – Government Services
28 Bank Mailing Address: 555 Capitol Mall, Suite 1555, Sacramento, CA 95814

8.3 At the time of payment, Settling Defendants shall send notice that payment has been
made to DTSC in accordance with Section XIII (Notices and Submissions).

VII. FAILURE TO COMPLY WITH CONSENT DECREE

1
2 9. Interest on Late Payments. If Settling Defendants fail to make any payment under
3 Paragraphs 5 and 8.1 by the required due date, Interest shall continue to accrue on the unpaid
4 balance through the date of payment.

5 10. Stipulated Penalty.

6 a. If any amounts due under Paragraph 5 are not paid to EPA by the required due
7 date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a
8 stipulated penalty, in addition to the interest required by Paragraph 9, \$1,000 to EPA, per
9 violation per day that such payment is late. If any amounts due under Paragraph 8.1 are not paid
10 to DTSC by the required due date, Settling Defendants shall be in violation of this Consent
11 Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 9,
12 \$1,000 to DTSC, per violation per day that such payment is late.
13

14 b. Payment of Stipulated Penalties to EPA. Stipulated penalties are due and
15 payable within 30 days of the date of the demand for payment of the penalties by EPA All
16 payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be
17 made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund."
18 The check, or a letter accompanying the check, shall reference the name and address of the
19 party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 093Y, and
20 DOJ Case Number 90-11-3-09404, and shall be sent to:
21

22
23 U.S. Environmental Protection Agency
24 Superfund Payments
25 Cincinnati Finance Center
26 P.O. Box 979076
27 St. Louis, MO 63197-9000
28

c. At the time of each payment, Settling Defendants shall send notice that payment has
been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions).

1 d. Payment of Stipulated Penalties to DTSC. Stipulated penalties are due and
2 payable within 30 days of the date of the demand for payment of the penalties by DTSC. All
3 payments to DTSC under this Paragraph shall be identified as "stipulated penalties" and shall be
4 made by certified or cashier's check made payable to "Cashier, Department of Toxic Substances
5 Control," bearing on its face the project code for the Site (site #100337) and shall reference the
6 Lava Cap Mine Site. Settling Defendants shall send the check[s] to:

7 Department of Toxic Substances Control
8 Accounting Office
9 1001 I Street, 21st Floor
10 P.O. Box 806
11 Sacramento, California 95814-0806

12 e. At the time of each payment, Settling Defendants shall send notice that
13 payment has been made to DTSC in accordance with Section XIII (Notices and Submissions).

14 f. Penalties shall accrue as provided in this Paragraph regardless of whether EPA
15 or DTSC has notified Settling Defendants of the violation or made a demand for payment, but
16 need only be paid upon demand. All penalties shall begin to accrue on the day after payment is
17 due and shall continue to accrue through the date of payment. Nothing herein shall prevent the
18 simultaneous accrual of separate penalties for separate violations of this Consent Decree.

19 11. If the United States or DTSC brings an action to enforce this Consent Decree,
20 Settling Defendants shall reimburse the United States or DTSC for all costs of such action,
21 including but not limited to costs of attorney time.

22 12. Payments made under this Section shall be in addition to any other remedies or
23 sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the
24 requirements of this Consent Decree.

25 13. The obligations of Settling Defendants to pay amounts owed the United States and
26 DTSC under this Consent Decree are joint and several. In the event of the failure of any one or
27
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1 more Settling Defendants to make the payments required under this Consent Decree, the
2 remaining Settling Defendants shall be responsible for such payments.

3 14. Notwithstanding any other provision of this Section, the United States may, in its
4 unreviewable discretion, waive payment of any portion of the stipulated penalties due to it that
5 have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse
6 Settling Defendants from payment as required by Section VI or from performance of any other
7 requirements of this Consent Decree.

8
9 14.1 Notwithstanding any other provision of this Section, DTSC may, in its
10 unreviewable discretion, waive payment of any portion of the stipulated penalties due to it that
11 have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse
12 Settling Defendants from payment as required by Section VI or from performance of any other
13 requirements of this Consent Decree.

14 **VIII. COVENANT NOT TO SUE BY PLAINTIFFS**

15
16 15. Covenant Not to Sue by United States. Except as specifically provided in Section IX
17 (Reservation of Rights by United States and DTSC), the United States covenants not to sue or to
18 take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of
19 CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with
20 regard to the Site. With respect to present and future liability, this covenant not to sue shall take
21 effect upon receipt of all payments required by Section VI (Payment of Response Costs) and any
22 amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to
23 sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations
24 under this Consent Decree. This covenant not to sue extends only to Settling Defendants and
25 does not extend to any other person.

26
27 15.1. Covenant Not to Sue by DTSC. Except as specifically provided in Section IX
28 (Reservation of Rights by United States and DTSC), DTSC covenants not to sue or to take
CONSENT DECREE

1 administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of
2 CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and California Health & Safety Code Section 25300,
3 with regard to the Site. With respect to present and future liability, this covenant not to sue shall
4 take effect upon receipt of all payments required by Section VI (Payment of Response Costs) and
5 any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not
6 to sue is conditioned upon the satisfactory performance by Settling Defendants of their
7 obligations under this Consent Decree. This covenant not to sue extends only to Settling
8 Defendants and does not extend to any other person.
9

10 **IX. RESERVATION OF RIGHTS BY UNITED STATES AND DTSC**

11 16. The United States reserves, and this Consent Decree is without prejudice to, all rights
12 against Settling Defendants with respect to all matters not expressly included within the
13 Covenant Not to Sue by United States in Paragraph 15. Notwithstanding any other provision of
14 this Consent Decree, the United States reserves all rights against Settling Defendants with
15 respect to:
16

- 17 a. liability for failure of Settling Defendants to meet a requirement of this
18 Consent Decree;
- 19 b. criminal liability;
- 20 c. liability for damages for injury to, destruction of, or loss of natural resources,
21 and for the costs of any natural resource damage assessments;
- 22 d. liability, based upon Settling Defendants' ownership or operation of the Site,
23 or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement
24 for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at
25 or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and
26 e. liability arising from the past, present, or future disposal, release or threat of
27 release of a hazardous substance, pollutant, or contaminant outside of the Site.
28

CONSENT DECREE

1 16.1. DTSC reserves, and this Consent Decree is without prejudice to, all rights against
2 Settling Defendants with respect to all matters not expressly included within the Covenant Not to
3 Sue by DTSC in Paragraph 15.1. Notwithstanding any other provision of this Consent Decree,
4 DTSC reserves all rights against Settling Defendants with respect to:

5 a. liability for failure of Settling Defendants to meet a requirement of this
6 Consent Decree;

7 b. criminal liability;

8 c. liability for damages for injury to, destruction of, or loss of natural resources,
9 and for the costs of any natural resource damage assessments;

10 d. liability, based upon Settling Defendants' ownership or operation of the Site,
11 or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement
12 for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at
13 or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and
14

15 e. liability arising from the past, present, or future disposal, release or threat of
16 release of a hazardous substance, pollutant, or contaminant outside of the Site.
17

18 **X. COVENANT NOT TO SUE BY SETTling DEFENDANTS**

19 17. Settling Defendants covenant not to sue and agree not to assert any claims or causes
20 of action against the United States or DTSC, or their contractors or employees, with respect to
21 the Site or this Consent Decree, including but not limited to:

22 a. any direct or indirect claim for reimbursement from the Hazardous Substance
23 Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.
24 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

25 b. any claim arising out of response actions at or in connection with the Site,
26 including any claim under the United States Constitution, the State Constitution, the Tucker Act,
27
28

28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States or DTSC pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 19 (Waiver of Claims) and Paragraph 23 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States or DTSC brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 16 (c) - (e) and 16.1(c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States or DTSC is seeking pursuant to the applicable reservation.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

19. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Except as provided in Paragraph 19, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 19, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with

CONSENT DECREE

1 respect to any matter, transaction, or occurrence relating in any way to the Site against any person
2 not a Party hereto.

3 21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling
4 Defendants are entitled, as of the date of entry of this Consent Decree, to protection from
5 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C.
6 § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this
7 Consent Decree are all response actions taken or to be taken and all response costs incurred or to
8 be incurred, at or in connection with the Site, by the United States, DTSC, or any other person.
9 The "matters addressed" in this Consent Decree do not include those response costs or response
10 actions as to which the United States and DTSC have reserved their rights under this Consent
11 Decree (except for claims for failure to comply with this Decree), in the event that the United
12 States or DTSC assert rights against Settling Defendants coming within the scope of such
13 reservations.
14

15
16 22. Each Settling Defendant agrees that, with respect to any suit or claim for contribution
17 brought by it for matters related to this Consent Decree, it will notify EPA and DOJ and DTSC in
18 writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant
19 also agrees that, with respect to any suit or claim for contribution brought against it for matters
20 related to this Consent Decree, it will notify EPA and DOJ and DTSC in writing within 10 days
21 of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify
22 EPA and DOJ and DTSC within 10 days of service or receipt of any Motion for Summary
23 Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for
24 matters related to this Consent Decree.
25

26 23. In any subsequent administrative or judicial proceeding initiated by the United States
27 or DTSC for injunctive relief, recovery of response costs, or other relief relating to the Site,
28 Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the
CONSENT DECREE

principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or DTSC in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section VIII.

XII. RETENTION OF RECORDS

24. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

25. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ and DTSC at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ or DTSC, Settling Defendants shall deliver any such records to EPA or DTSC. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted.

26. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or DTSC or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA

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requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C.

§§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, DTSC, and Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-09404

and

Director, Superfund Division
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

As to DOJ

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-09404

As to EPA:

Sara Goldsmith, ORC-3
Assistant Regional Counsel
United States Environmental Protection Agency

CONSENT DECREE

1 Region 9

2 75 Hawthorne Street

3 San Francisco, CA 94105

4 Russell Harris-Bishop, SFD-7-2

5 Remedial Project Manager

6 United States Environmental Protection Agency

7 Region 9

8 Assistant Regional Counsel

9 75 Hawthorne Street

10 San Francisco, CA 94105

11 David Wood

12 Regional Financial Management Officer

13 United States Environmental Protection Agency

14 Region 9

15 75 Hawthorne Street

16 San Francisco, CA 94105

17 As to DTSC:

18 Richard B. Hume, Chief

19 National Priorities List Unit

20 Northern California - Central Cleanup Operations Branch

21 Department of Toxic Substances Control

22 8800 Cal Center Drive

23 Sacram 0

24 Email:

25 As to Settling Defendants:

26 Jacqui Beckett

27 Senior Counsel

28 Newmont Capital Limited

1700 Lincoln Street

Denver, Colorado 80203

and

Hal J. Pos

Parsons Behle & Latimer

201 South Main Street

Suite 1800

Salt Lake City, Utah 84111

CONSENT DECREE

XIV. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDIX

29. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. Plaintiffs reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

32. Each undersigned representative of a Settling Defendant and DTSC and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless Plaintiffs have notified Settling Defendants in writing that they no longer support entry of the Consent Decree.

34. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, DTSC, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 200_.

United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the *United*
2 *States of America and the State of California Department of Toxic Substances Control v.*
3 *Newmont Capital Limited and Newmont Mining Corporation of Canada Limited*, relating to the
4 Lava Cap Mine Superfund Site.

5 FOR PLAINTIFF UNITED STATES OF AMERICA:

6 /s/Ronald J. Tenpas

Date: July 30, 2008

7 RONALD J. TENPAS

8 Assistant Attorney General

9 Environment and Natural Resources Division

10 United States Department of Justice

11 /s/Thomas P. Carroll

Date: September 12, 2008

12 THOMAS P. CARROLL

13 Senior Attorney

14 Environmental Enforcement Section

15 Environment and Natural Resources Division

16 Department of Justice

17 P.O. Box 7611

18 Washington, D.C. 20044-7611

19 (202) 514-4051 (Tel.)

20 MCGREGOR W. SCOTT

21 United States Attorney

22 /s/Sylvia Quast

Date: September 12, 2008

23 SYLVIA QUAST, California Bar No. 159011

24 Chief, Defense Litigation Unit

25 United States Attorney's Office

26 Eastern District of California

27 501 I Street, Suite 10-100

28 Sacramento, CA 95814

(916) 554-2740 (Tel.)

(916) 554-2900 (Fax)

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2 *States of America and the State of California Department of Toxic Substances Control v.*
3 *Newmont Capital Limited and Newmont Mining Corporation of Canada Limited*, relating to the
4 Lava Cap Mine Superfund Site.

5
6 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

7 /s/Keith Takata

Date: September 2, 2008

8 KEITH TAKATA
9 Director, Superfund Division
10 U.S. Environmental Protection
11 Region 9
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 /s/ Sara Goldsmith

Date: August 1, 2008

15 SARA GOLDSMITH
16 Assistant Regional Counsel
17 U.S. Environmental Protection Agency
18 Region 9
19 75 Hawthorne Street
20 San Francisco, CA 94105

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2 *States of America and the State of California Department of Toxic Substances Control v.*
3 *Newmont Capital Limited and Newmont Mining Corporation of Canada Limited*, relating to the
4 Lava Cap Mine Superfund Site.

5
6 FOR PLAINTIFF THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC
7 SUBSTANCES CONTROL:

8 /s/Richard Hume, P.E.

9 Date: August 13, 2008

10 RICHARD HUME

11 Chief, National Priorities List Unit

12 8800 Cal Center Drive

13 Sacramento, CA 95826-3200
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28

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2 *States of America and the State of California Department of Toxic Substances Control v.*
3 *Newmont Capital Limited and Newmont Mining Corporation of Canada Limited*, relating to the
4 Lava Cap Mine Superfund Site.

5
6 FOR DEFENDANT NEWMONT CAPITAL LIMITED:

7 /s/Britt D. Banks

Date: July 1, 2008

8 BRITT D. BANKS

9 Vice President

10 Newmont Capital Limited

11 1700 Lincoln Street, 28th Floor

12 Denver, CO 80203-4501

13 Agent Authorized to Accept Service on Behalf of Above-signed Party:

14 Corporation Service Company

15 d/b/a CSC-Lawyers Incorporating Service

16 2730 Gateway Oaks Drive, Suite 100

17 Sacramento, CA 95833

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of the *United*
2 *States of America and the State of California Department of Toxic Substances Control v.*
3 *Newmont Capital Limited and Newmont Mining Corporation of Canada Limited*, relating to the
4 Lava Cap Mine Superfund Site.

5
6 FOR DEFENDANT NEWMONT MINING CORPORATION OF CANADA LIMITED:

7 /s/Britt D. Banks

Date: July 1, 2008

8 BRITT D. BANKS

9 Vice President

10 Newmont Mining Corporation of Canada Limited

11 1700 Lincoln Street, 28th Floor

12 Denver, CO 80203-4501

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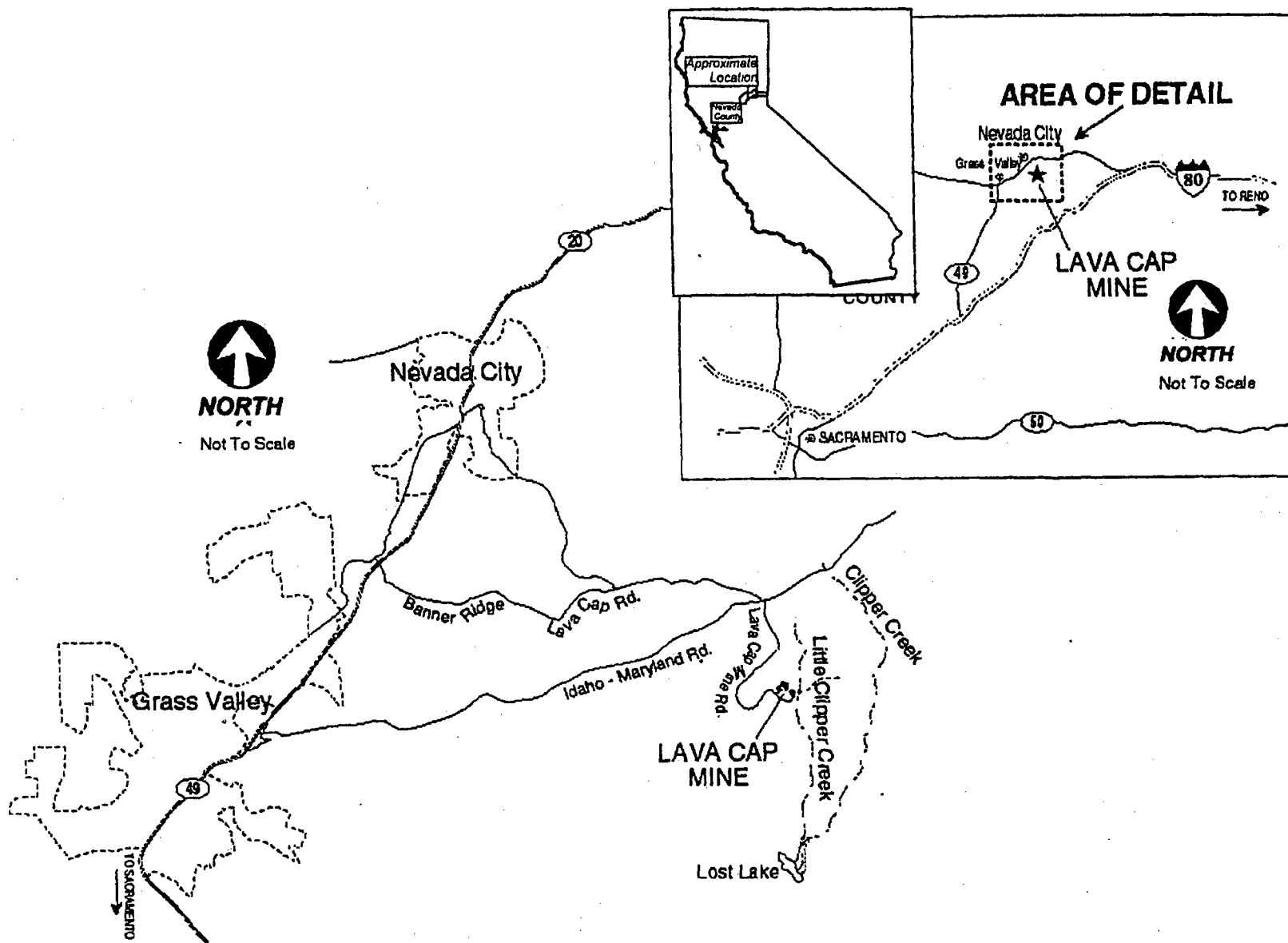


FIGURE 1
SITE LOCATION MAP
LAVA CAP MINE
NEVADA COUNTY, CALIFORNIA